

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish left patellar tendinitis causally related to the accepted factors of his federal employment.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 9, 2018 appellant, then a 25-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained patellar tendinitis due to factors of his federal employment. He noted that he first became aware of his condition on June 1, 2017 and realized its relationship to his federal employment on January 10, 2018. Appellant had stopped work on January 6, 2018.

In a February 20, 2018 progress note, Dr. Gregory H. Dairyko, a Board-certified orthopedic surgeon, indicated that appellant worked as a mail carrier and reported that appellant may walk 10 to 11 miles a day. He noted that appellant reported that he sustained an injury to the left knee in June 2017, for which he had received a cortisone injection. Dr. Dairyko noted appellant's physical examination findings and indicated that x-ray films of the left knee revealed evidence of Osgood-Schlatter's disease with preservation in the medial, lateral, and patellofemoral joint space. He provided an assessment of acute left knee pain and left knee pain, unspecified chronicity, and recommended a course of physical therapy. An accompanying February 20, 2018 x-ray of appellant's left knee revealed no acute radiographic findings or significant degenerative changes.

In a March 5, 2018 form and surgical worksheet, Dr. Adam Yanke, a Board-certified orthopedic surgeon, cleared appellant for a left knee arthroscopic debridement and possible chondroplasty and patellar tendon injection. The diagnoses for the procedure were listed as left knee patellar cartilage defect with patellar tendinitis and articular cartilage defect.

In a May 11, 2018 development letter, OWCP advised appellant of the deficiencies in his claim. It requested that he submit additional medical evidence, including a rationalized report from his physician addressing causal relationship between a diagnosed medical condition and the identified employment factors. OWCP further provided a questionnaire for appellant's completion to substantiate the factual allegations of his claim. It afforded him 30 days to submit the necessary evidence.

On July 6, 2018 appellant completed OWCP's development questionnaire and explained that his left knee pain was due to walking and climbing stairs in all kinds of weather and carrying a mailbag in the performance of his mail carrier duties.

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<sup>3</sup> Docket No. 20-0237 (issued October 16, 2020).

In a January 10, 2018 report, Dr. Siva Krishman, a Board-certified family practitioner, reported that appellant injured his left knee about five or six years prior playing basketball and, since then, physical activity caused light pain. She noted that he worked as a letter carrier and had developed increased pain and swelling with activity. Dr. Krishman provided a primary diagnosis of chronic left knee pain and held appellant off work. In a February 13, 2018 form report, she noted his restrictions and recommended a sedentary position.

A June 12, 2018 magnetic resonance imaging (MRI) scan of appellant's left knee revealed mild edema of the infrapatellar fat pad, mild quadriceps, and proximal patellar tendinosis without tear. No acute meniscal or ligamentous injury was seen.

In medical reports dated April 6, May 11 and 29, and June 19, 2018, Dr. Dairyko noted appellant's MRI scan findings. He diagnosed acute pain of left knee and patellar tendinitis of left knee. Dr. Dairyko also provided several work excuse and medical restriction notes dated from April 6 to June 19, 2018.

By decision dated July 25, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed left knee condition was causally related to the accepted employment factors.

On August 12, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The request was converted to a review of the written record at counsel's request. No additional evidence was submitted.

By decision dated February 25, 2019, OWCP's hearing representative affirmed the July 25, 2018 decision.

On March 19, 2019 OWCP received appellant's undated request for reconsideration. In a March 4, 2019 report, Dr. Henry Legaspi, an osteopath Board-certified in physiatry, opined that appellant's left chronic patellar tendinosis could have been a result of his work as a mail carrier given the required repetitive knee flexion and extension.<sup>4</sup>

On June 26, 2019 appellant, through counsel, requested reconsideration. In support of his request, counsel submitted an April 17, 2019 report by Dr. Legaspi, who indicated that appellant's pain at the inferolateral corner of the left patella began while he was working as a letter carrier. His job required walking approximately 8 to 14 miles per day, sometimes on uneven surfaces. Dr. Legaspi advised that patellar tendinosis was a chronic overuse injury that is usually seen in younger patients who perform sports activities that involve repetitive flexion and extension of the knees and typical symptoms are felt at the inferior pole of the patella. He opined that, given the repetitive nature of appellant's job, and no other reported activities that can cause patellar tendinosis such as sports or running, it was "entirely possible that appellant's patellar tendinosis was caused by his occupation as a mailman."

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<sup>4</sup> Appellant appealed OWCP's February 25, 2019 decision to the Board on April 1, 2019, however, he subsequently withdrew his request. By order dated June 25, 2019, the Board dismissed the appeal at the request of appellant's counsel. *Order Dismissing Appeal*, Docket No. 19-0956 (issued June 25, 2019).

By decision dated September 23, 2019, OWCP denied modification of its February 25, 2019 decision.

On November 11, 2019 appellant, through counsel, filed an appeal with the Board. By decision dated October 16, 2020, the Board affirmed the September 23, 2019 OWCP decision, finding that appellant had not met his burden of proof to establish that his left patellar tendinitis was causally related to the accepted factors of his federal employment.<sup>5</sup>

On June 17, 2021 appellant, through counsel, requested reconsideration.

In a June 7, 2021 report, Dr. Legaspi reported that appellant was seen that day for persistent, anterior knee pain that worsened with activity. He related that appellant's pain had been present for approximately four to five years with evidence of patellar tendinosis from 2018. Dr. Legaspi opined that "[i]t is more likely than not that [appellant] developed patellar tendinosis from repetitively walking on uneven surfaces while at work as a mailman."

By decision dated June 29, 2021, OWCP denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,<sup>7</sup> that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>9</sup>

In an occupational disease claim, appellant's burden requires submission of the following:

(1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the

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<sup>5</sup> See *supra* note 3.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>8</sup> *T.H.*, Docket No. 17-747 (issued May 14, 2018); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>9</sup> *T.H.*, *id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

diagnosed condition is causally related to the employment factors identified by the employee.<sup>10</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>12</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his left patellar tendinitis is causally related to the accepted factors of his federal employment.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to OWCP's September 23, 2019 decision because the Board considered that evidence in its October 16, 2020 decision and found that it was insufficient to establish his claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>14</sup>

In support of his request for reconsideration, following the Board's October 16, 2020 decision, appellant submitted a June 7, 2021 report from Dr. Legaspi. Dr. Legaspi diagnosed patellar tendinosis and opined that it was "more likely than not" that appellant developed the diagnosis from repetitively walking on uneven surfaces while working as a mailman. As he couched his impression in terms of "more likely than not," his opinion on causal relationship is

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<sup>10</sup> *K.V.*, Docket No. 21-0008 (issued November 15, 2021); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>11</sup> *K.V., id.*; *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>12</sup> *W.R.*, Docket No. 19-0460 (issued May 18, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see A.S.*, Docket No. 19-1955 (issued April 9, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>14</sup> *See K.V., supra* note 10; *B.R.*, Docket No. 17-0294 (issued May 11, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>15</sup>

As appellant has not submitted rationalized medical evidence to establish left patellar tendinitis causally related to the accepted factors of employment, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish left patellar tendinitis causally related to the accepted factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> See *A.G.*, Docket No. 20-1319 (issued May 19, 2021); *R.W.*, Docket No. 19-0844 (issued May 29, 2020); *M.M.*, Docket No. 18-1522 (issued April 22, 2019).